

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

DAVID TIMOTHY DONOVAN,

Plaintiff,

-v-

1:12-CV-1827 (NAM/DEP)

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

APPEARANCES:

David Timothy Donovan
Plaintiff, *Pro Se*

Hon. Richard S. Hartunian, United States Attorney
Sixtina Fernandez, Esq., Special Assistant U.S. Attorney
100 South Clinton Street
Syracuse, New York 13261
Attorney for Defendant

Hon. Norman A. Mordue, Senior U.S. District Judge:

MEMORANDUM-DECISION AND ORDER

Plaintiff's complaint claims that he has been wrongfully denied a cost of living adjustment to his Social Security benefits for the years 2010 and 2011. Attached to his complaint is a notice from the Social Security Administration advising that there was no cost of living adjustment in 2010 and 2011. Defendant moves (Dkt. No. 15) for dismissal of the action for lack of subject-matter jurisdiction, Fed. R. Civ. P. 12(b)(1), and on the ground of sovereign immunity.

United States Magistrate Judge David E. Peebles issued a Report and Recommendation (Dkt. No. 18) recommending that the motion be granted on the ground that plaintiff's claim does not arise from a final decision of the Social Security Administration and that therefore the Court

lacks subject-matter jurisdiction under 42 U.S.C. § 405(g) and (h). Moreover, because section 405(g) does not provide a cause of action against the Government for claims such as plaintiff's, his claim is barred by sovereign immunity.

Plaintiff objects. Upon *de novo* review pursuant to 28 U.S.C. § 636(b)(1)(C), the Court accepts the Report and Recommendation and grants the motion to dismiss.

It is therefore

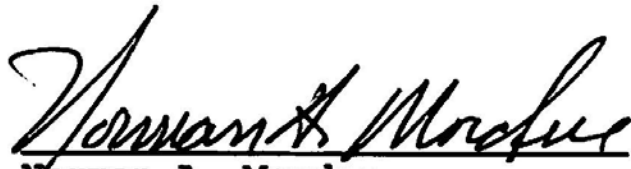
ORDERED that the Report and Recommendation (Dkt. No. 18) is accepted; and it is further

ORDERED that defendant's motion to dismiss (Dkt. No. 15) is granted; and it is further

ORDERED that the Clerk of the Court is directed to serve copies of this Memorandum-Decision and Order in accordance with the Local Rules of the Northern District of New York.

IT IS SO ORDERED.

Date: December 20, 2013
Syracuse, New York


Norman A. Mordue
Senior U.S. District Judge